

AMENDED AND RESTATED
CONSERVATION AGREEMENT
AMONG
PLUM CREEK TIMBER COMPANY, L.P.
AND
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
AND
U.S.D.A. FOREST SERVICE, FLATHEAD NATIONAL FOREST
AND
UNITED STATES FISH AND WILDLIFE SERVICE
DATED AS OF
June 6, 1997

Conservation Agreement (the "Agreement" or "Conservation Agreement") dated as of February 23, 1995, as amended and restated as of June 6, 1997, among Plum Creek Timber Company, L.P. ("Plum Creek"), Montana Department of Natural Resources and Conservation ("DSL" or "Montana Department of State Lands"), the Flathead National Forest ("Forest Service") and United States Fish and Wildlife Service (the "Service") (collectively referred to either as the "parties" or the "Parties", except where the context implies reference to only the land managers, in which case the term "Parties" or "parties" shall mean Plum Creek, the Forest Service and DSL).

RECITALS

WHEREAS, the Service and the Forest Service are committed to the conservation of the grizzly bear in the Northern Continental Divide Ecosystem;

WHEREAS, Plum Creek and DSL wish to comply with the Endangered Species Act as amended (as so amended, the "Act") and to cooperate in the conservation of the grizzly bear;

WHEREAS, the Swan Valley presents a unique situation because of the intermingled pattern of land ownership and development in the valley;

WHEREAS, an adaptive management approach to management of the integrated pattern of ownership and development in the valley has the best chance of success; and

WHEREAS, after consulting on the current scientific understanding of the grizzly bear and the requirements of the Act, the Parties hereto have agreed upon a set of reasonable and prudent management practices for implementation on certain of Plum Creek, DSL and National Forest lands in the Northern Continental Divide Ecosystem Grizzly Bear Recovery Zone that reduces the impact of activities on the grizzly bear in the unique setting of the Swan Valley;

NOW THEREFORE, the Parties hereto agree:

AGREEMENT

1. Definitions

This Agreement is consistent with the Flathead Land and Resource Management Plan, as amended (the "LRMP"). The Forest Service is bound by and/or accepts existing definitions found within the LRMP. The Forest Service will utilize existing definitions found in the LRMP, unless definitions found in this Agreement are more conservative in regard to the Bear, in which case, definitions found in this Agreement will be utilized.

"Active Subunit" shall mean those BMU Subunits in which the Parties are conducting Administrative and Commercial Use activities.

"Active Subunit Restricted Road" shall mean a gated or barriered road within an Active Subunit which is closed for all uses except Administrative Use and Commercial Use.

"Administrative Use" shall mean use by Plum Creek, Forest Service, or DSL associated with all land and resource management activities including, without limitation, timber sale layout, road location, precommercial thinning, road maintenance, tree planting, slash disposal and Salvage Harvest, but shall not include Commercial Use. Administrative Use also shall mean minor actions such as bough and post and pole harvest that are less than two consecutive weeks in duration.

"Bear" shall mean the grizzly bear (*Ursus arctos horribilis*).

"BMU Subunits" shall mean the female home range analysis areas specified on Attachment D hereto, which is hereby incorporated herein and made a part hereof.

"BMUs" shall mean Bear Management Units as set forth in Attachment A, which is hereby incorporated herein and made a part hereof.

"Commercial Use" shall mean major forest management activities by Plum Creek, Forest Service, or DSL including, without limitation, road construction, road reconstruction and timber harvest, but does not include Salvage Harvest.

"Conservation Area" shall mean certain Plum Creek, National Forest and DSL lands set forth on Attachment B, which is hereby incorporated herein and made a part hereof, that lie within the Swan Valley in the Northern Continental Divide Ecosystem Grizzly Bear Recovery Zone.

"Core Areas" shall mean those areas as defined by the IGBC Access Task Force Report (July 1994) and set forth in Attachment C, which is hereby incorporated herein and made a part hereof.

"Cover" shall mean vegetation blocks having a minimum diameter of at least three Sight Distances, which on Plum Creek and DSL lands shall not be less than 300 feet.

"Denning Period" shall mean the period between November 16 and March 31.

"Effective Date" shall have the meaning set forth in Section 6 hereof.

"Even Age Cutting Unit" shall mean a harvest unit in which either a clearcut or seedtree silvicultural prescription is used or any other treatment that would result in openings of more than three (3) Sight Distances.

"Guidelines" shall mean the principles and guidelines for forest management set forth in Section 3 hereof, as the same may be amended from time to time.

"Inactive Subunit" shall mean those BMU Subunits in which the Parties are not conducting Commercial Use activities.

"Inactive Subunit Restricted Road" shall mean a gated or barriered road within an Inactive Subunit, which is closed for all uses except Administrative Use, and Commercial log haul when necessary.

"Linkage Zones" shall mean the areas necessary for linking populations of Bears specified on Attachment E, which is hereby incorporated herein and made a part hereof.

"Open Road" shall be any road on which there are no use restrictions. Open Road shall not mean Restricted Roads or highways, county roads, administrative site access roads and private residence access roads.

"Preferred Habitat" shall mean areas adjacent to streams and wetlands inside Linkage Zones as set forth in Attachment G, as the same may be changed from time to time by mutual agreement of the Parties based on field verification.

"Reclaimed Road" shall mean a road which (i) has been "put to bed" to address Bear security or to address watershed concerns by pulling culverts and revegetating with trees or grass; and (ii) is generally unusable for 4-wheeled vehicles due to physical obstructions such as "kelly humps" or other physical obstructions, rather than gates. Reclaimed Road shall also mean roads that are physically blocked using large cement blocks or equivalent barriers. A Reclaimed Road will not receive motorized Administrative or Commercial uses.

"Restricted Period" shall mean the non-denning period which runs between April 1 and November 15.

"Restricted Roads" shall mean Active Subunit Restricted Roads and Inactive Subunit Restricted Roads.

"Riparian Zone" shall mean a streamside management zone as defined on the date hereof in the Montana Streamside Management Zone Rules, a copy of which is attached hereto in Attachment F, which is hereby incorporated herein and made a part hereof.

"Salvage Harvest" shall mean short term activities to harvest dead or dying trees resulting from fire, disease, blowdown or the like and shall not continue for periods of more than two consecutive weeks or for more than 30 days in the aggregate during a given calendar year in the non-denning period (April 1 to November 15). Salvage activities that result from catastrophic fire or blowdown and that require more than two consecutive weeks to complete, will require special management considerations (refer to Section 3(b)(iv)).

"Sight Distance" shall mean the distance at which 90% of an animal is hidden from view, which on Plum Creek and DSL lands is approximately 100 feet depending on the type of cover available.

"Spring Habitat" shall mean all areas within Linkage Zones below 5200 feet in elevation.

"Spring Period" shall mean period of time running from April 1 to June 15.

"Take" shall mean take of a species as contemplated under Section 9 of the Act.

"Visual Screening" shall mean a minimum of one Sight Distance.

2. Stated Purposes

(a) Integrated Management Objectives

It is the objective of the Parties to establish an ecosystem-based management plan throughout the Conservation Area which allows affected Parties to realize the economic and recreational benefits of their ownership while helping conserve the Bear and other species. The basic purpose of the Conservation Agreement is to outline and begin implementation of a strategy through which multi- jurisdictional land owners can comply with the Act as it regards the Bear, while continuing to practice forestry and multiple user management on their timberlands in the Conservation Area. Through the implementation of this strategy, the Parties intend to integrate timber management, recreational management and Bear management practices in a manner that is both ecologically and economically sound in a mixed ownership environment. Further, it is the objective of the Parties to use an adaptive management approach to accomplish Bear conservation.

(b) Avoidance of Take

While incidental Take of Bears in specific cases is always a possibility, it is the intent of the Parties that adherence to the Guidelines should reduce the possibility of incidental Take. Violations of the Guidelines will not necessarily constitute Take but may invalidate the legal protection provided by an incidental Take statement issued pursuant to consultations under Section 7 of the Act as

contemplated herein. The legal definition of Take must be applied if it becomes necessary to determine whether a Section 9 violation has occurred.

(c) Consultation

Under Section 7 of the Act, Federal agencies are required to consult with the Service when their actions are likely to affect Bears. The Parties expect that the agreement to carry out forest management in the Conservation Area in accordance with the Guidelines will facilitate such consultations. In some cases, reasonable and prudent alternatives may be required to avoid jeopardizing the continued existence of the Bear, and an incidental take statement may be issued. Absent material change in the scientific understanding of the Bear, the Parties agree that the Guidelines will serve as the basis for reasonable and prudent alternatives, should they be necessary, in connection with Plum Creek, DSL, and agency actions in or affecting the Conservation Area.

(d) Results of Consultation

Because of the possibility that incidental Take might occur, and because the Guidelines will, in the opinion of the Service, satisfy the requirements of Section 7(a)(2) of the Act and will reduce the impact of management activities on the Bear across the Conservation Area, the Service will issue incidental take statements as appropriate in connection with consultations involving actions in or affecting the Conservation Area. Specifically, the Guidelines shall constitute the reasonable and prudent measures referred to in Section 7(b)(4)(ii) of the Act and the terms and conditions referred to in Section 7(b)(4)(iv) of the Act, with such changes thereto as are reasonably necessary and appropriate to reflect site specific conditions and to meet the requirements of the ESA.

3. Management Guidelines

Plum Creek, DSL, and the Forest Service agree to carry out forest management practices within the Conservation Area during the term of this Conservation Agreement, as the term may be extended, according to the practices and procedures that follow. In addition to the practices and procedures documented in this agreement, the Forest Service will continue to adhere to all Objectives, Standards and Guidelines found in the Flathead Forest LRMP, as amended. While this Agreement establishes shared responsibilities to achieve biological targets and threshold planning goals across multiple-ownership landscapes, there are certain principles inherent in these Guidelines. These principles include: (1) the notion that while this Agreement relies on the best scientific and commercial information available on the date hereof, the strategies set forth in Section 3 may need to be revised as new information about the Bear becomes available; (2) in recognition of (1), above, the Parties acknowledge the need for flexibility in the Agreement and they expect to consult periodically, pursuant to the terms of Section 4 of the Agreement, to consider such needs; (3) the need to engage in additional monitoring

and coordination under Section 4 of the Agreement will be principally governed by the needs of the Bear within the Conservation Area and, insofar as possible, the Parties will endeavor to jointly agree on such needs and; (4) no Party should be forced to mitigate for the shortfall of any other Party.

(a) Open Road Densities

- (i) To minimize the risk of death or injury to Bears, the Parties will manage roads throughout the Conservation Area so that no more than 33% of any given BMU Subunit exceeds an Open Road density of one mile per square mile during the Restricted Period. This density will be achieved as soon as is practicable, but no later than five years after the Effective Date. The long-term goal is that no more than 21% of a BMU Subunit shall exceed the Open Road density of one mile per square mile. The reduction from 33% to 21% will be done by voluntary road closures by the Parties.
- (ii) The share of the allowable possible deviation from the 1 mi/sq mile standard will be apportioned among the Parties in approximate proportion to land ownership within the BMU Subunit, provided that no Party shall take advantage of road reductions made by another Party, except as mutually agreed to by all Parties. No Party will be required to close roads if the required open road density of 33% set forth in Section 3(a)(i) is otherwise being met.
- (iii) Open road densities of lands owned or managed by the Parties within each BMU Subunit will be calculated using a GIS moving window technique.

(b) Operations and Uses

- (i) The Parties agree to stop all management activities (other than replanting and non-motorized Administrative Use) during the Spring Period in Spring Habitat, provided that (x) Administrative Use and the hauling of harvested logs may occur on roads that are open to the public that are in such Spring Habitat and (y) road use associated with replanting and limited spring burning is permitted on all roads. Roads within Linkage Zones at low elevation that are open to all Administrative Uses between April 1 and June 15 are shown in Attachment H.
- (ii) The Parties agree to limit the number of Active Subunits within the Conservation Area by concentrating Commercial Use during the Restricted Period in four (4) out of the eleven (11) BMU Subunits on a rotational basis, leaving the other seven (7) BMU Subunits as Inactive Subunits during the Restricted Period for a minimum of three (3) years. The rotational schedule as it is currently contemplated is governed by Attachment I attached to and hereby made a part of this Agreement. At no

one time during the Restricted Period will more than: two BMU Subunits be Active Subunits within the Mission Range BMU; one BMU Subunit be an Active Subunit within the Big Salmon BMU; and one BMU Subunit be an Active Subunit within the Bunker BMU. The Parties will commence such rotation on the date set forth in Attachment I, but in any event not later than three years after the Effective Date. Periodically, as necessary, the Parties may agree to adjust or modify these seasonal and rotational concepts based on evolving science regarding the needs of the Bear. Attachment I may be modified and updated as needed based on coordination and agreement among the Parties. Insofar as possible, schedules will be developed 3 years in advance of the start of the Commercial Activity within a BMU Subunit.

- (iii) Every effort will be made to minimize uses in Inactive Subunits, but when in the interests of local residents it may be possible to allow post and pole and bough collection in Inactive Subunits as long as the activity is less than two consecutive weeks in duration.
- (iv) Salvage Harvests will not occur in Spring Habitat during the Spring Period. In Inactive Subunits, Salvage Harvests shall be conducted either: (x) between June 16 and August 31 as long as they do not exceed more than 30 days in the aggregate for a given Inactive Subunit within a given calendar year, or (y) during the Denning Period (November 16 to March 31). Salvage Harvests during the period June 16 to August 31 in Inactive Subunits resulting from extraordinary events such as catastrophic fire or blowdown that require more than two consecutive weeks or in the aggregate more than 30 days in a calendar year to complete, may require special management. The Parties agree to confer on a case-by-case basis with respect to such events to determine the special management opportunities that might compensate for any such Salvage Harvests.
- (v) Although the Parties will attempt wherever feasible to avoid activities during the Spring Period in Spring Habitat outside of Preferred Habitat, they recognize that some Administrative and Commercial Use may need to occur in Active Subunits in such low elevation areas during such period. If a party wishes to conduct an activity within Spring Habitat (but outside of Preferred Habitat) during the Spring Period that is otherwise prohibited by subparagraphs (i) or (iv) above, such party may nevertheless conduct such activity provided that the activity complies with a plan prepared in accordance with this paragraph. Before conducting such activity, the Party proposing such activity agrees to confer with the Service on a disturbance avoidance plan to mitigate for such activity. Such plan, which shall be prepared by a wildlife biologist for the party proposing such activity after conferring with the Service, shall detail the steps that will be taken to avoid and/or minimize the impacts of the

activity on Bears and be submitted to the Service for review at least four weeks prior to the commencement of the planned activity.

(c) Road Locations

- (i) The Parties recognize the importance of Preferred Habitat and Riparian Zones to Bear security and the Service recognizes the Parties' need to access their lands. Accordingly, the Parties will limit the construction of new roads in Preferred Habitat and Riparian Zones to those roads that are essential to forest management. In addition, any roads built in these areas will be constructed in such a manner as to minimize the density/mileage of roads in such areas. Existing roads will be analyzed and those not required for short term management will be Reclaimed, and those roads needed for ongoing primary access will be relocated when reasonable.
- (ii) Within the Conservation Area, harvest or new road construction will leave Visual Screening between roads that are outside of Even Age Cutting Units and the Unit itself, although exceptions may be required to accommodate some cable yarding harvest.

(d) Cover

- (i) The Parties will evaluate Cover across all ownerships and will manage their lands so that a minimum of 40% of all land in each BMU Subunit in the Conservation Area is maintained in Cover. To the extent feasible, Cover will be distributed evenly throughout the Subunit. Each party will be responsible for maintaining cover, at a level adequate to meet the 40% objective, in proportion to its ownership within the Subunit.
- (ii) Visual Screening retention will be the management objective in areas adjacent to all Open Roads. The Parties will leave Visual Screening adjacent to Open Roads, although exceptions may be required for such situations as cable yarding harvest and in some exceptional cases of insects, disease, or blow down. Even-age treatments adjacent to Open Roads will be no larger than one acre.
- (iii) The Parties will lay out Even Age Cutting Units in the Conservation Area so that no point in the unit is more than 600 feet from Cover. The Parties will use their best efforts to leave Cover around natural open areas so that no point of such openings is more than 600 feet from Cover. Catastrophic events will be dealt with on a case-by-case basis.
- (iv) In large Even Age Cutting Units (larger than 40 acres) the Parties will retain Cover to reduce line-of-sight distances.

(e) Riparian Zones

The Parties will use uneven-aged forest management practices in Riparian Zones located in the Conservation Area.

(f) Security

- (i) The Parties acknowledge that Reclaimed Roads and Restricted Roads are important for providing security for Bears. The Parties agree to contribute to security, particularly within Linkage Zones, by reclaiming or restricting roads. Plum Creek and DSL may voluntarily elect to contribute to security, particularly within Linkage Zones, by reclaiming (as defined in this Agreement) some roads that are not essential to their respective management. The Forest Service hereby agrees not to take management actions that increase total road density or open road density or to decrease Core Areas on its ownership. DSL will voluntarily agree to contribute those areas set forth in Attachment C as Core Areas. The Forest Service also agrees to reclaim roads to enhance use of preferred and other high quality habitats, and to complement adjacent areas of secure habitat. The Parties will cooperate in identifying roads on their lands within the Conservation Area that are grown-in and/or unnecessary for management and will make such roads Reclaimed Roads from April 1 to November 15 in order to increase security for bears. The Parties agree not to reclaim existing roads accessing the other Parties' lands without first ensuring that reasonable alternative access exists. Plum Creek and DSL agree to work with the Forest Service to minimize the number and length of new roads that will go through Core Areas; provided, however, that the foregoing will not require Plum Creek or DSL to accept alternate access that would preclude reasonable use of their lands. The Forest Service agrees that if the only reasonable access is through Core Areas that it will provide replacement Core Areas, where feasible, so that such access by Plum Creek and DSL is possible.
- (ii) The Parties will prohibit their contractors that are working under contract from carrying firearms while on duty.
- (iii) Plum Creek and DSL will not be subject to a total road density standard. The Forest Service will not take management actions that increase total road density on its ownership except to the extent required by law to grant access to inholders. The Forest Service agrees to reclaim roads to the extent necessary to meet its total road density obligations. Plum Creek and DSL agree to work with the Forest Service to minimize the total road density impact on the Forest Service caused by their access requests; provided that the foregoing will not require Plum Creek or DSL to accept

alternative access that would preclude reasonable use of their respective lands.

- (iv) Nothing in this Section 3(f) shall be construed to change the obligation of the Forest Service to maintain existing easements and permits or to provide access to non-federal lands within the boundaries of the national forest, as required by law.

4. Monitoring and Coordination

- (a) The Parties acknowledge that the principles of "adaptive management" should govern management within the Conservation Area. As such, new information gained from monitoring and research, conducted either within or outside the Conservation Area, will be reviewed on an annual or more frequent basis, as necessary, to determine if changes in management direction are appropriate. The Parties may choose to support such research/monitoring by contributing to ongoing or future proposed Bear research projects.
- (b) The Parties will cooperatively monitor the application and effectiveness of the Guidelines on an ongoing basis and provide the Service with the results thereof on an annual basis. Monitoring will include: (i) an analysis of open and total road densities, (ii) levels of Administrative Use in Inactive Subunits, (iii) levels of Administrative Use on Restricted Roads within Linkage zones during the Spring Period and fall period (September 1 to November 15).
- (c) The Guidelines will be reviewed by the Parties annually and appropriately revised, pursuant to the procedures set forth in Section 10 hereof. Revisions will be commensurate with new research findings concerning Bear conservation practices and experience with the practicability of the strategies agreed to here.
- (d) The Parties agree to develop strategies to inform the public about the needs of the Bear.

5. Application

The provisions of this Conservation Agreement have been tailored to protect Bears under the special conditions present within the Swan Valley of the Northern Continental Divide Ecosystem. The terms of this agreement apply only to the Conservation Area as defined in this Agreement.

6. Effectiveness

This Conservation Agreement shall be effective upon the date (the "Effective Date") when the following events have occurred: (i) execution of the Agreement by all the Parties, and (ii) issuance of a biological opinion evaluating the effects of this Conservation Agreement, together with an incidental take statement as contemplated by Section 2(d) hereof.

7. Term

- (a) This Conservation Agreement shall remain in effect for five years, commencing on the Effective Date, and shall thereafter self-renew for successive one year periods unless otherwise terminated pursuant to the terms hereof.
- (b) Any Party may cancel this Conservation Agreement upon (30) thirty days written notice to the other Parties.

8. Resources

Nothing in this Conservation Agreement shall require the Service, DSL, or the Forest Service to expend funds that have not been lawfully appropriated and administratively allocated for such use.

9. Notices

Notices hereunder shall be sent to, and all contacts regarding this Conservation Agreement should be made through:

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Fax: (303) 236-8295

10. Amendments

The Parties acknowledge that advances in the scientific understanding of the Bear may occur as a result of the monitoring hereunder or due to other scientific studies that could necessitate changes in this Conservation Agreement. The Parties will negotiate such changes in good faith and agree to enter into mutually acceptable dispute resolution, if necessary. If such changes cannot be agreed upon, then any of the Parties may declare this Conservation Agreement null and void, effective immediately upon notification to the other Parties. All amendments to this Conservation Agreement shall be in writing and signed by all Parties hereto.

IN WITNESS WHEREOF, duly authorized representatives of the Parties hereto have duly executed this Conservation Agreement on the date set forth below.

U.S.D.A. Forest Service,
Flathead National Forest

United States Fish and Wildlife Service

By _____
Date _____

By _____
Date _____

Plum Creek Timber Company, L.P.

Montana Department of State Lands

By _____
Date _____

By _____
Date _____

Attachments – Not Included in this copy

- A -- BMUs
- B -- Conservation Area
- C -- Core Areas
- D -- Female Home Range Analysis Areas--BMU Subunits
- E -- Linkage Zones
- F -- Riparian Zones
- G -- Preferred Habitat
- H -- Open Roads in Low Elevation Linkage Zones
- I -- Rotation Schedule